

48-2e-1005 Special litigation committee.

- (1) If a limited partnership is named as or made a party in a derivative proceeding, the limited partnership may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the limited partnership. If the limited partnership appoints a special litigation committee, on motion by the committee made in the name of the limited partnership, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:
 - (a) enforcing a person's right to information under Section 48-2e-304 or 48-2e-407; or
 - (b) granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.
- (2) A special litigation committee must be composed of one or more disinterested and independent individuals, who may be partners.
- (3) A special litigation committee may be appointed:
 - (a) by a majority of the general partners not named as parties in the proceeding; and
 - (b) if all general partners are named as parties in the proceeding, by a majority of the general partners named as defendants.
- (4) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited partnership that the proceeding:
 - (a) continue under the control of the plaintiff;
 - (b) continue under the control of the committee;
 - (c) be settled on terms approved by the committee; or
 - (d) be dismissed.
- (5) After making a determination under Subsection (4), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under Subsection (1) and allow the action to continue under the control of the plaintiff.

Enacted by Chapter 412, 2013 General Session